

**American Rivers \* Idaho Rivers United \* Institute for Fisheries  
Resources \* National Wildlife Federation \* Pacific Coast Federation of  
Fishermen's Associations\* Save Our *Wild* Salmon \* Sierra Club \*  
Trout Unlimited \* U.S. Public Interest Research Group**

November 14, 2003

D. Robert Lohn  
Pacific Northwest Regional Administrator  
NOAA Fisheries  
7600 Sand Point Way NE  
Seattle, WA 98115-0070

***Re: Comments on the Action Agencies' "Endangered Species Act 2003 Check-In Report for the Federal Columbia River Power System"***

Dear Mr. Lohn:

We are writing on behalf of the Save Our *Wild* Salmon Coalition and the undersigned individual organizations to comment on the *Endangered Species 2003 Check-In Report for the Federal Columbia River Power System* (September 2003). We appreciate this opportunity and hope that our comments provide your agency with useful guidance to ensure the recovery of salmon and steelhead in the Columbia River Basin.

With a combined membership of over six million, Save Our *Wild* Salmon (SOS) is a diverse nationwide coalition of commercial and sport fishing associations, conservation organizations, taxpayer advocates, clean energy proponents, businesses and others joined under a single unifying mission: to restore self-sustaining, harvestable populations of wild salmon to the rivers and streams of the Pacific Northwest. As such, our organizations have closely monitored the implementation of the Federal Columbia River Power System (FCRPS) Biological Opinion (BiOp). This involvement resulted in the release of two substantive reports in 2002 and 2003 chronicling the implementation of the BiOp since its release in December 2000.

These reports, known as Salmon Plan Report Cards, concluded that in both 2001 and 2002, the federal Action Agencies (Army Corps of Engineers, Bureau of Reclamation, Bonneville Power Administration) had largely failed to implement the BiOp in a timely and sufficient manner. In fact, our research showed that in 2001 and 2002, the Action Agencies meaningfully implemented only 25 and 30 percent, respectively, of the actions called for in the BiOp.<sup>1</sup>

Based on those analyses and the substantive concerns outlined below regarding the content of the 2003 Check-In Report, we conclude that the insufficiency of the Action Agencies' BiOp

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<sup>1</sup> Save Our Wild Salmon Coalition, *Salmon Plan Report Card: The Federal Plan to Restore Salmon And Steelhead in the Columbia & Snake River Basin: Year One, Year Two*, (February 2002, 2003) at [www.wildsalmon.org](http://www.wildsalmon.org). Incorporated herein by reference.

implementation cannot be remedied through changes to the 1- and 5-year plans, and that it cannot be fully remedied by actions within the current authority of these agencies. **We therefore recommend that NOAA Fisheries issue a failure report for the 2003 Check-In and direct the Action Agencies to seek and obtain additional authority from Congress pursuant to section 9.5.2.3 of the BiOp.** Additional authority, including but not limited to the authority to partially remove the four lower Snake River dams, is necessary to “ensure that the actions ... avoid jeopardy and adverse modification of critical habitat... [and] to ensure that *all options are available at the mid-point evaluation in 2005.*” (Emphasis added)<sup>2</sup>

Fortunately, members of Congress foresaw the importance of keeping all available options on the table in case of implementation shortfalls and are already working towards granting Congressional authority for one critical recovery option – the partial removal of the four lower Snake River dams. Bipartisan legislation, H.R. 1097 (the Salmon Planning Act), introduced by Representatives Jim McDermott (D-WA) and Thomas Petri (R-WI) would grant the Army Corps of Engineers the authority to partially remove the dams pending the recommendation of an appropriate federal agency. The legislation would also initiate a series of studies to weigh the economic impacts – both positive and negative – of partial dam removal. As of this writing, the Salmon Planning Act has the co-sponsorship of 100 Members of Congress from both sides of the aisle. In the event that NOAA Fisheries issues a failure report for the 2003 Check-In, we recommend that the relevant agencies work with Congress to ensure the passage of this important legislation.

In addition to the conclusions of the Salmon Plan Report Cards, the following points elucidate the basis for our recommendation:

#### **I. Contents of the 2003 Check-In Report**

NOAA Fisheries required the Action Agencies to provide a *comprehensive and cumulative* assessment of the BiOp’s implementation, including responses to specific questions such as:

- Whether the Action Agencies and other agencies in the Federal Caucus have obtained the *funding and authorizations necessary for timely implementation of key actions*;
- Whether the Action Agencies have initiated *adequate pilot studies, research, and monitoring* projects;
- Whether the Action Agencies, in coordination with other Federal agencies, have adopted *biological and physical performance standards*; and
- Whether *subbasin assessments and hatchery genetic management plans and safety net planning* have been completed.

The simple answer to these questions is categorically “no.” In fact, though they do not always recognize them as such, even the Action Agencies themselves identify significant concerns in

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<sup>2</sup> National Marine Fisheries Service (NMFS), *Federal Columbia River Power System Biological Opinion*, (December 2000) at Sec. 9.5.2.3, 9-44.

every area of their *Conclusions on Cumulative Implementation*.<sup>3</sup> Rather than discuss the individual 199 Reasonable and Prudent Alternative (RPA) actions, our comments instead focus on key RPA actions and general, over-arching concerns within the categories listed above.<sup>4</sup>

## A. Funding and Authorization

### i. Funding

The Action Agencies conclude that annual funding, averaging nearly \$400 million/year, from Congress and from Northwest ratepayers has been “sufficient overall.”<sup>5</sup> It is difficult to chronicle with any certainty the adequacy of annual spending due to the absence of a publicly available, detailed cross-agency summary of the projected costs of implementation. Moreover, the federal appropriations process is hardly transparent enough to determine whether indeed critical projects, such as water acquisition programs, will receive the amount of funding requested by the agencies. In the absence of this detail, the public is left only to take the Action Agencies at their word that funding is “sufficient.”

According to an internal analysis by NOAA Fisheries (then the National Marine Fisheries Service), however, it appears that the annual amounts spent are far below what was said to be necessary before the BiOp’s release in 2000.<sup>6</sup> For example, in fiscal year (FY) 2004 alone, NOAA Fisheries estimated that nearly \$933 million would be required. Of this, \$659.6 million was estimated to be needed for Action Agency actions. Whether or not one takes this estimate as a precise measurement of needed appropriations, the significant discrepancy between what was originally estimated and what is being spent raises serious questions about whether the BiOp is being meaningfully implemented as anticipated.

The same criticisms can be applied to the funding situation for other members of the federal caucus and the broader federal salmon recovery family, including NOAA Fisheries, Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Indian Affairs, U.S. Geological Survey, Natural Resources Conservation Service, and the Environmental Protection Agency. We are particularly concerned that the 2003 Check-In Report, which should only address Columbia Basin salmon recovery, improperly includes a table (Table 5-1 in the Check-In Report) that includes all federal spending on Pacific salmon recovery, coast-wide. For instance, only a small portion of the \$90 million allocated to the Pacific Salmon Coastal Recovery Fund is spent on salmon recovery efforts in the Columbia Basin.

In addition, the amount certain federal agencies spend on Columbia Basin salmon programs was recalculated without explanation in federal documents outlining the President’s proposed salmon

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<sup>3</sup> See Bureau of Reclamation, Army Corps of Engineers, Bonneville Power Administration, *Endangered Species Act 2003 Check-In Report for the Federal Columbia River Power System*, (September 2003) at pp. 19-20.

<sup>4</sup> For detailed analysis of action-by-action RPA implementation, please refer to the Salmon Plan Report Cards incorporated by reference *see supra* at footnote #1.

<sup>5</sup> See Bureau of Reclamation, Army Corps of Engineers, Bonneville Power Administration, *Endangered Species Act 2003 Check-In Report for the Federal Columbia River Power System*, (September 2003) at p. 1.

<sup>6</sup> See Administrative Record filed in *National Wildlife Federation v. NMFS*, 254 F. Supp.2d 1196 (D.Or. 2003), at Administrative Record Document C. 3527.

budget for FY 2004 (and in subsequent federal caucus estimates, including in Table 5-1). For instance, the President's salmon budget proposal for FY 2003 presented the FY 2002 U.S. Forest Service Columbia Basin salmon budget at \$13 million. But the President's FY 2004 proposal revised the Forest Service's FY 2002 salmon spending to \$56.5 million. The difference was that revision included a variety of actions labeled salmon recovery efforts that have little, if anything, to do with salmon recovery. These actions had not been considered to qualify as salmon recovery actions in prior years. Forest Service actions considered "salmon and steelhead recovery efforts" for the first time in the FY 2004 budget include hazardous fuels reduction, hazardous waste cleanup, and trails maintenance, among other attenuated actions. The salmon budgets for the EPA and the BOR are similarly revised and inflated in recent federal caucus and administration documents.

In summary, absent inclusion of the Pacific Coastal Salmon Recovery Fund and a variety of ongoing actions that have been only recently deemed part of federal salmon recovery strategy, we calculate that the President's FY 2004 Columbia Basin salmon budget request (which does not appear likely to be fully funded by Congress this year) would be at least \$150 million, or over 20 percent, lower.

## **ii. Authorization**

The 2003 Check-In Report also downplays the significance of the failure to secure two significant authorizations. This failure threatens the long-term and near-term success of the BiOp. The first concerns a lack of authorization to acquire available private land for restoration of the Columbia River estuary. The Army Corps of Engineers (Corps) is directed by the BiOp to protect and enhance 10,000 acres of tidal wetlands and other key habitats over 10 years (beginning in 2001) to rebuild productivity for listed salmon and steelhead populations in the estuary – key habitat for juvenile salmon as they enter the ocean, and for adult salmon before they migrate upstream.<sup>7</sup> The Corps generally acknowledges that lack of land acquisition authority is a "limiting factor" affecting achievement of this goal, but given the key role that estuary restoration plays in the BiOp's RPA, the agency's failure to acquire this authority is more appropriately characterized as a "major shortfall." Indeed, the Corps admits that it has succeeded thus far in acquiring only 451 acres of habitat in the estuary, and projects that the "multiple estuary habitat restoration" projects that it hopes to have done by 2007 will restore only 1,500 acres of habitat.<sup>8</sup> Moreover, the approach outlined by the Corps to meet the BiOp's requirements using existing authority raises many questions and leaves much to be desired.

The Corps has recommended overcoming this substantial limitation by working with a third party, non-profit group and willing-seller landowners. While this may address some restoration needs, it will not necessarily result in the restoration of the most scientifically viable and biologically important land. Furthermore, the question of where funding may come from is significant, yet unanswered. In all, these shortfalls leave little question that estuary restoration goals – a key component of offsite mitigation – will continue to go unmet.

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<sup>7</sup> NMFS, *2000 FCRPS Biological Opinion*, Sec. 9.6.2.2, p. 9-139.

<sup>8</sup> *See* Bureau of Reclamation, Army Corps of Engineers, Bonneville Power Administration, *Endangered Species Act 2003 Check-In Report for the Federal Columbia River Power System*, (September 2003) at p. 5.

A second, equally troubling, failure concerns the inability of the Bureau of Reclamation (BOR) to secure the authorization necessary to fund and implement on-the-ground construction for habitat restoration (modifying screens, retrofitting or removing passage barriers, etc.) in priority subbasins.<sup>9</sup> BOR claims this program is on schedule, but recognizes that up until now it has only been able to provide technical assistance in these areas. Nearly five congressional sessions have passed since the release of the BiOp, but an effort to secure the required authorization was not initiated until the current session of Congress. As of this writing, it appears that Congress will not grant the BOR the necessary authorization this session. Given the importance of offsite mitigation to successful implementation of the BiOp, the long-term scope of this action, and the uncertainty surrounding Congressional approval, we view this delay as significant. While providing technical assistance in the near term may be worthwhile, absent BOR authority there is little certainty that high-priority habitat restoration activities will be carried out in the timeframe contemplated by the BiOp.

## B. Monitoring and Evaluation

Activities and programs to adequately monitor and evaluate the success of this BiOp – or lack thereof – are severely behind schedule. The significance of this delay, though dramatically understated by the Action Agencies, is immense. Federal taxpayer and Northwest ratepayer dollars are now being spent without any meaningful mechanism for determining whether the so-called “aggressive non-breach” approach, which favors “offsite mitigation” actions as an alternative to lower Snake River dam removal, is biologically effective and economically efficient.

The BiOp stipulated that many of these actions, including critically important recovery planning and habitat effectiveness monitoring, were to be *completed* by 2003.<sup>10</sup> However, as of this writing, *planning* for Research, Monitoring, and Evaluation (RM&E) is still in draft form and there are significant question marks surrounding implementation, funding, and coordination. To our knowledge, the agencies still have not reached agreement on a system of common data management to integrate the research of various agencies – a critical step towards the success of any comprehensive RM&E program.

NOAA Fisheries recognized shortfalls in effectiveness monitoring as a significant limiting factor in its *Findings Regarding Adequacy of the FCRPS Action Agencies’ 2003 Annual Implementation Plan* and suggested that these shortfalls will impact the Action Agencies’ ability to demonstrate that “proposed actions can increase life stage survival” and that they are “being implemented at a scale sufficient to avoid jeopardy.”<sup>11</sup> We concur with that assessment and see no indication that meaningful actions are being taken to remedy the situation.<sup>12</sup>

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<sup>9</sup> NMFS, *2000 FCRPS Biological Opinion*, Sec. 9.6.2.1, p. 9-133

<sup>10</sup> NMFS, *2000 FCRPS Biological Opinion*, Sec. 9.6.5

<sup>11</sup> NMFS, *NMFS’ Findings Regarding Adequacy of the Endangered Species Act 2003/2003-2007 Implementation Plan for the Federal Columbia River Power System*, (May 14, 2003) referencing *FCRPS Biological Opinion*, Sec. 9.5.3.2.4.

<sup>12</sup> NOAA Fisheries also appears to be struggling with its role in the RM&E process. A recent report by the Independent Scientific Review Panel (ISRP) judged four of the five Mainstem Systemwide RM&E proposals

### C. Status of Subbasin Assessments

Subbasin planning is an integral component, if not the central element, of the BiOp's offsite mitigation strategy forming the foundation of the so-called "aggressive non-breach" approach. Along with effectiveness monitoring (see above), the delayed progress in formulating subbasin plans was identified by NOAA Fisheries as a significant problem.<sup>13</sup> Even the Action Agencies themselves recognize that subbasin plans are substantially delayed. In fact, to date, only one subbasin plan (Clearwater Basin) has been submitted for scientific review. This plan was roundly criticized by the Independent Scientific Review Panel (ISRP) for being "not consistent with the Fish and Wildlife Program" and, in its current form, not a viable subbasin plan.<sup>14</sup> The Action Agencies are now targeting May 2004 for submission of subbasin plans for review. Given the slow pace to date and the lack of available funding to implement the plans when, and if, they receive approval, we see little reason to believe that subbasin planning and subsequent on-the-ground restoration activities will be sufficiently far along to contribute to meaningful recovery in the near future and certainly not in time for this 2003 Check-In.

The significance of this delay *cannot be overstated*. As mentioned, subbasin planning is a central element of offsite mitigation. Indeed, it is impossible to have a successful check-in while still missing this critical piece of the puzzle. The Action Agencies' assessment credits the delay simply to difficulties with "regional coordination." Though coordination can be trying, it is not an acceptable reason for delay. Coordination challenges could and should have been anticipated. A failure to address "coordination" issues must be viewed as a fundamental flaw in the Biological Opinion. In fact, the Independent Scientific Advisory Board concluded as much in its review of the BiOp more than two years ago:

*"Fully implementing the proposed actions would require a level of cooperation that has never before been achieved, and the documents do not explain how this cooperation would be pursued. In particular the documents reject mainstem dam breaching in favor of aggressive tributary habitat restoration, but how coordination would occur between public, private and tribal land managers to provide habitat improvement is inadequately addressed."* (Emphasis added)<sup>15</sup>

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submitted by NOAA Fisheries/Northwest Fisheries Science Center as "not fundable." Among the ISRP's observations about the revised RM&E proposals it was reviewing was a statement that "[t]he revised proposals do not demonstrate or describe a well-coordinated effort toward the development of a systematic and thorough approach to RM&E." Independent Scientific Review Panel, *Review of Revised Mainstem Systemwide Proposals for Research, Monitoring, and Evaluation*, ISRP-2003-6 (March 24, 2003), p. 2. The report also mentions concerns about potential conflicts of interests and unreasonably high costs regarding RM&E proposals to date.

<sup>13</sup> NMFS, *NMFS' Findings Regarding Adequacy of the Endangered Species Act 2003/2003-2007 Implementation Plan for the Federal Columbia River Power System*, (May 14, 2003) referencing *FCRPS Biological Opinion*, Sec. 9.5.3.2.4.

<sup>14</sup> Independent Scientific Review Panel, *Review of Draft Clearwater Subbasin Plan*, ISRP-2003-3 (February 2003).

<sup>15</sup> Independent Scientific Advisory Board, *A Review of Salmon Recovery Strategies for the Columbia River Basin*, 2001-7 (August 2001).

## D. Performance Standards

More than a decade after the first Endangered Species Act listings for Pacific salmon, efforts to prevent the extinction of salmon and steelhead in the Columbia Basin are still being carried forward without the guidance of final performance standards and recovery goals. Without this critical information, it is impossible to determine whether a biological opinion will indeed avoid jeopardy. Making funding decisions without defined recovery goals will likely result in an inefficient and wasteful use of limited funding and time. The four Northwest governors recently highlighted this concern in their recommendations for protecting and restoring Columbia basin fish and wildlife.<sup>16</sup>

The failure to develop biological performance standards is significant. This error will be compounded in the event that final recovery goals are not fully incorporated into recovery planning during the BiOp remand. Given the lack of progress thus far, there is little to indicate that this will be remedied.

## II. Update on Population Growth Trends

Report 6 of the 2003 Check-In contains an update on adult population growth trends and population growth rates. This report concludes that improvements to fish passage at mainstem dams, to habitat in tributary subbasins, and to hatchery and harvest practices are resulting in population gains when combined with a favorable ocean environment. First, it is somewhat troubling that the Action Agencies have put forth a scientific analysis regarding population growth rates and abundance trends in advance of NOAA, and without rigorous independent review. Second, despite recent returns, the Action Agencies provide no credible evidence that their hydro and offsite actions, many of which have suffered severely from delay, are in any way responsible for this upswing even when combined with favorable ocean conditions. In fact, their conclusion directly contradicts a report by the U.S. General Accounting Office which found “little conclusive evidence” to quantify the effects of these actions on returning fish populations.<sup>17</sup>

Recent salmon returns are a much welcome sight in the Northwest, particularly for communities and businesses that rely on salmon for their livelihood. However, hasty and potentially politically motivated conclusions about the reasons for the upswing may serve to squander the contributions current runs could be making to long-term salmon and steelhead recovery in the Columbia Basin. In truth, the actions of the Action Agencies since implementation of this BiOp first began in 2001 have had little, if anything, to do with recent returns. Age class analyses to date suggest that fish out-migrating while the current BiOp has been in effect have contributed

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<sup>16</sup> See *Recommendations of the Governors of Idaho, Montana, Oregon and Washington for Protecting and Restoring Columbia River Fish and Wildlife and Preserving the Benefits of the Columbia River Power System* (June 2003).

<sup>17</sup> U.S. General Accounting Office, *Columbia River Salmon and Steelhead: Federal Agencies' Recovery Responsibilities, Expenditures and Actions*, GAO-02-612 (July 2002).

little to recent returns.<sup>18</sup> The majority of the fish that migrated to the ocean during this BiOp are still in the ocean.

Moreover, 2001 juvenile out migrants were significantly harmed by poor conditions caused by the so-called “hydrosystem emergency” that year. The 2001 juvenile out migration was marred by extremely low flows and lack of spill, which resulted in the lowest in-river survival and longest passage/travel times since salmon were first listed under the ESA.<sup>19</sup> Preliminary data compiled by state salmon managers provides “early and strong indications that the SARs [smolt-to-adult returns of 2001 out migrants] have been reduced due to the poor out migration conditions.”<sup>20</sup>

The Action Agencies are not in a position to claim that their actions have in any way contributed to recent returns. As such, their conclusions should in no way be used as a basis for NOAA’s assessments on implementation, or as a basis for decision-making in the BiOp remand.<sup>21</sup>

### **III. Relationship of the 2003 Check-In Report to the Biological Opinion Remand Issued by the U.S. District Court of Oregon**

What is perhaps most unsettling about the Action Agencies’ check-in report is that it distorts the true picture of the failed implementation of the 2000 BiOp. As NOAA is well aware, the U.S. District Court for the District of Oregon held that the 2000 BiOp was arbitrary and capricious and did not comply with the Endangered Species Act (“ESA”) because NOAA had misdefined the “action area” and had improperly relied on off-site, range-wide future federal actions that have not undergone section 7 consultation and off-site, range-wide state, private, or tribal actions that are not “reasonably certain to occur” in preparing and evaluating the RPA.<sup>22</sup>

Fixing these problems should be NOAA’s main task on remand. But NOAA must also demonstrate that the measures described in its RPA are within the authority and jurisdiction of the action agencies, are technologically and economically feasible, can be implemented in a manner consistent with the purpose of the project, and will avoid jeopardy.<sup>23</sup> We are concerned that NOAA’s reliance on this Check-In Report as it develops the rewrite would result in an incomplete and inaccurate picture of whether the action agencies have actually completed RPA actions. It would be folly for NOAA to rely on the inadequate implementation of this BiOp to

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<sup>18</sup> Washington Department of Fish and Wildlife, Letter to National Academy of Sciences *Re: Water Resources Management, Instream Flows, and Salmon Survival in the Columbia River Basin, Washington WSTB-U-02-02-A*, (September 9, 2003).

<sup>19</sup> *See* Fish Passage Center, 2001 Annual Report.

<sup>20</sup> Washington Department of Fish and Wildlife, Letter to National Academy of Sciences *Re: Water Resources Management, Instream Flows, and Salmon Survival in the Columbia River Basin, Washington WSTB-U-02-02-A*, (September 9, 2003).

<sup>21</sup> Of course, the Action Agencies failed to mention that, even with more recent higher returns, only three Snake River sockeye returned to Redfish Lake to spawn this year.

<sup>22</sup> National Wildlife Federation, et al. v. National Marine Fisheries Service, 254 F. Supp.2d 1196, 1211-12 (D. Or. 2003).

<sup>23</sup> 50 C.F.R. § 402.02 (definition of “reasonable and prudent alternative”)

justify “staying the course” in the rewritten BiOp. As SOS has demonstrated for the past three years in its Report Cards, and highlights again in these comments, the Action Agencies have failed to fully fund and implement this BiOp. The distorted picture of the BiOp’s implementation presented in the Action Agencies’ Report cannot change this fact, and should not infect NOAA’s attempt to address the shortcomings of this BiOp on remand.

#### **IV. Independent Oversight**

In general, the Action Agencies’ conclusion that “overall implementation is on track” in the face of glaring inadequacies raises serious questions about the usefulness of this Check-In Report. There is overt and apparent pressure on the Action Agencies and other salmon management agencies to maintain the status quo and thus report that implementation is “on track.” The result is a fundamentally flawed check-in that fails to provide an honest and meaningful account of implementation to-date.

Even if NOAA assumes that the so-called “aggressive non-breach” approach is still a scientifically and economically sound means to achieve salmon recovery, implementation of salmon restoration strategies in the Pacific Northwest must be carried forth – to every extent possible – without the interference of political pressure.<sup>24</sup> Failure to do so could result in the squandering of a precious natural resource and an icon of the Pacific Northwest.

The 2003 Check-In Report is laden with glaring omissions and misrepresentations, ranging from the overtly evident failure to achieve spring and summer flow targets since the release of the BiOp to the more subtle failures to coordinate monitoring programs.<sup>25</sup> In light of this, we find the need to establish independent oversight critical to this check-in. The 2000 BiOp recognized the importance of having public and legal confidence in the Action Agencies’ activities and in the science that forms the basis of recovery strategies. NOAA suggested pursuing independent scientific review (through the Regional Forum and the Independent Scientific Advisory Board) of the 5- and 8-year evaluation reports.

In light of the recent decision by the U.S. District Court for Oregon, we feel it is appropriate to extend third-party review to both the 2003 Check-In Report and NOAA’s subsequent evaluation. Moreover, in order to establish public and legal faith in the BiOp remand, we feel it necessary to subject the scientific analyses underlying the forthcoming biological opinion to independent

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<sup>24</sup> It should be noted that the BiOp concludes that lower Snake River dam removal, under all assumptions regarding delayed mortality and for all Snake River ESUs evaluated, would be more effective at improving survival than would the BiOp RPA. *See NMFS, 2000 FCRPS Biological Opinion*, 9-198 – 9-220; 9-265 – 9-280.

<sup>25</sup> The failure to achieve spring and summer target flows in the Snake under the auspices of this BiOp, chronicled in more detail in the Salmon Plan Report Cards, is worth special mention here. Since 2000, the Action Agencies have continually failed to acquire the 427,000 acre-feet from the upper Snake River Basin contemplated in the BiOp, and have not adequately established and funded an energy exchange agreement with the Idaho Power Company that allows shaping of releases from the Hells Canyon complex to be optimized for salmon. The result of this is lower in-river survival for all Snake stocks, vastly lower survival of 2001 juvenile Snake salmon and steelhead out migrants, and a failure to reverse the decline of Snake River sockeye despite the benefits of improved ocean conditions.

review as well.<sup>26</sup> We are ready and willing to engage in discussions with the relevant agencies to discuss the nature and extent of such review.

## V. Conclusion

In light of the conclusions of the 2001 and 2002 Salmon Plan Report Cards, as well as the supplemental concerns outlined above, we recommend that NOAA issue a failure report in its evaluation of the 2003 Check-In Report. We urge the Action Agencies to subsequently begin pursuit of additional options not currently authorized including, but not limited to, partial removal of the lower Snake River dams. Given the failure to adequately fund and implement the current biological opinion, as well as the legal insufficiency thereof, additional actions are necessary in order to avoid jeopardy and keep all available options on the table. We stand ready to assist salmon management agencies in those efforts.

Sincerely,

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Save Our *Wild* Salmon

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Cc: Lisa Croft, Federal Caucus Coordinator (via email: [Lisa.Croft@noaa.gov](mailto:Lisa.Croft@noaa.gov))  
Brian Brown, Assistant Regional Administrator, NOAA Fisheries Hydropower Division  
Robert G. Walton, Assistant Regional Administrator, NOAA Fisheries Salmon Recovery  
Division  
Action Agency Regional Executives

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<sup>26</sup> SOS supports the Nez Perce Tribe's suggestion that the co-managers be given the opportunity for meaningful input into NOAA's findings letter for this Check-in and supports the efforts of the co-managers to have a voice in the development of the scientific process that NOAA is undertaking to rewrite the BiOp on remand from the Oregon District Court.